IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 28160 of 1999(B)

PETITIONER:

KUTTASSERY ABDULLA, SON OF AVARANKUTY HAJI, KUTTASSERY HOUSE, KUTHUKAL ROAD, MANCHERY, MALAPPURAM DIST.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:
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1. THE INTELLIGENCE OFFICER SQUAD NO.1, AGRICULTURAL INCOME TAX AND SALES TAX, MALAPPURAM.

2. DEPUTY COMMISSIONER (COMMERCIAL TAXES), MALAPPURAM.

3. COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVT., TAXES, THIRUVANANTHAPURAM.

BY G.P. SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 47800 OF 1999 IN OP 28160 OF 1999

DISMISSED

14.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF MEDICAL CERTIFICATE ISSUED BY THE SREE CHITRA THIRUNAL INSTITUTE OF MEDICAL SCIENCES AND TECHNOLOGY, THIRUVANANTHAPURAM.

EXT.P2 TRUE COPY OF ORDER DATED 2.4.1998 ISSUED BY THE FIRST RESPONDENT.

EXT.P3 TRUE COPY OF ORDER DATED 7.10.1998 ISSUED BY THE FIRST RESPONDENT.

EXT.P4 TRUE COPY OF SECOND REVISION PETITION DATED 29.10.98 FILED BEFORE THE THIRD RESPONDENT.

EXT.P5 TRUE COPY OF ORDER DATED 11.10.99 PASSED BY THE THIRD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 28160 OF 1999

Dated this the 14th day of November, 2007

JUDGMENT

Petitioner is challenging Ext.P5 issued by the Commissioner of Commercial Taxes confirming the penalty levied under Section 45A of the KGST Act. Inspection was carried out in the petitioner's shop on 5.7.1994. Inspecting Team found that petitioner was not maintaining proper books of accounts for the grocery business he was carrying on. Day Book was written only upto 30.4.1994. Since the Inspection was on 5.7.1994, it was obvious that accounts were behind by three months. No sale bills were issued for the sale of goods which is against the rules. Repeated notices issued for production of books of accounts were not responded and therefore exparte penalty orders were issued which got confirmed by impugned order. The prayer in the O.P. is for an opportunity to produce books of accounts. I do not think at this distance of time the matter need be remanded because inspection was held on 5.7.1994 and books of accounts are around 13 years old. Notice was served on one of the partners who later retired from the

firm, but was a partner on the date of inspection. Therefore petitioner cannot deny receipt of notice for production of accounts. However, I find some substance in the grievance of the petitioner in as much as entire physical stock was treated as unaccounted stock. The department concedes that petitioner is a registered dealer and was being assessed. Therefore obviously the entire stock should not have been treated as unaccounted stock. In the circumstances, I reduce the penalty to one and a half time the tax sought to be evaded as against two times levied. Penalty for non-production of books of accounts is not contested and therefore levy of Rs. 5,000/- is upheld.

O.P. is disposed of as above.

(C.N. RAMACHANDRAN NAIR)
Judge